

**RULES OF PRACTICE  
of the  
STATE BOARD OF EQUALIZATION**

**California Code of Regulations  
Title 18. Public Revenues  
Division 2. State Board of Equalization  
Chapter 10. Petition and Hearing Procedures**

**ARTICLE 2. BUSINESS TAXES AND TIMBER YIELD TAX**

**5020. DEFINITIONS; BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS ARTICLE.**

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to petitions for redetermination (other than petitions and applications for administrative hearings pertaining to jeopardy determinations, which are subject to Article 3, beginning with Regulation 5030) and claims for refund under the following programs:

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;  
Revenue and Taxation Code Sections 32001-~~32556~~[32557](#)

[Ballast Water Management Fee](#)

[Public Resources Code Sections 71200-71271;](#)  
[Revenue and Taxation Code Sections 44000-44008, 55001-55381](#)

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;  
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIII B;  
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge

Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge

Revenue and Taxation Code Sections 40001-40216

[Hazardous Spill Prevention Fee](#)

[Revenue and Taxation Code Sections 43800-43810, 55001-55381](#)

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Insurance Tax

California Constitution Article XIII, Section 28;  
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Motor Vehicle Fuel License Tax

California Constitution Article XIX;  
Revenue and Taxation Code Sections 7301-~~8404~~-8405

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;  
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Sales and Use Tax

(including State-administered local sales, transactions, and use taxes)  
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Tire Recycling Fee

Public Resources Code Sections 42860-42895;  
Revenue and Taxation Code Sections 55001-55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-~~50161~~-50162

Use Fuel Tax

Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, ~~43807~~, ~~44003~~, 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, and 60522.

### 5023. APPEALS CONFERENCE.

~~(a) An Appeals Attorney or Appeals Auditor independent of the assessing Department shall schedule a conference with the taxpayer to review the facts related to the petition or claim and the contentions of the taxpayer with respect to the applicable law and regulations. Discussion shall be informal. The purpose of the conference is to provide the taxpayer with an additional opportunity to document the factual basis of the petition or claim and to explain the taxpayer's position concerning the applicable law and regulations. The informal discussion is not an adversarial proceeding or an evidentiary hearing; testimony is not taken under oath; subpoenas are not issued; and the discussion is not recorded or reported by the Appeals Staff. Taxpayers may arrange for the conference to be recorded or reported. If recorded or reported, the taxpayer shall make a copy of the record or report of the conference available to Appeals Staff if the Appeals Staff requests a copy. The Board Proceedings Division shall schedule an appeals conference with the parties and a conference holder who is an Appeals Attorney or Appeals Auditor independent of the assessing Department. As requested by the taxpayer, an appeals conference may be held at the Sacramento headquarters of the Board, a district office, or by telephone. The appeals conference is an informal discussion of the relevant facts and applicable laws and regulations. The appeals conference is not an adversarial proceeding. Subpoenas are not issued for appeals conferences and testimony is not taken under oath; however, the conference holder will accept written statements made under penalty of perjury. The appeals conference is not recorded or reported by the conference holder. Taxpayers may arrange for the appeals conference to be recorded or reported. If the appeals conference is recorded or reported, the taxpayer shall make a copy of the tape or transcript available to the conference holder upon request.~~

(b) Rescheduling and Postponements.

(1) Rescheduling. If there is a scheduling conflict for an appeals conference to be held at headquarters or by telephone, the appeals conference may be rescheduled to accommodate the parties. If a party has sufficient justification, a second rescheduling may be allowed. An appeals conference scheduled to be heard at a district office may be postponed as discussed in subdivision (b) (2), unless the party requests that the appeals conference be rescheduled to a different district office, to headquarters, or to a telephone appeals conference.

(2) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases. If a party requests a postponement of an appeals conference to be held at the district office within 15 days after the date of the notice of the appeals conference sent by the Board Proceedings Division and has sufficient justification for requesting the postponement, the Board Proceedings Division may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the notice of the appeals conference, and can demonstrate extreme hardship for requesting the postponement, the Board Proceedings Division may allow the postponement. While only one postponement may be granted, an appeals conference may be rescheduled as provided in subdivision (b)(1).

(c) Failure to Respond or Appear; Waiver.

(1) If the taxpayer fails to respond to the notice of the appeals conference sent by the Board Proceedings Division by the deadline stated in the notice, or responds to the notice but fails to appear for the appeals conference, the conference holder shall conduct the appeals conference as scheduled with the Department.

(2) A party may waive appearance at the appeals conference.

(d) Submission of Additional Documents.

(1) A party may submit additional documents to the Appeals Section at any time before or during the appeals conference. If a party submits additional documents, the other party shall have the opportunity to respond to the documents either at the appeals conference or within 15 days after the appeals conference.

(2) If at an appeals conference a party requests time to submit additional documents, the party shall have 15 days after the appeals conference to submit the documents. The other party shall have an additional 15 days to respond to the documents submitted. If there is sufficient justification, the conference holder may extend the time period for either party by an additional 15 days. Neither party shall be allowed any further additional time to submit or respond to documents unless approved by either the Assistant Chief Counsel of the Appeals Section or his or her designees.

(3) A conference holder may contact either or both of the parties after the appeals conference in order to obtain clarification of the issues, or additional information on the issues. However, the conference holder shall not rely on any information obtained after the appeals conference in deciding an issue against a party, without giving that party an opportunity to respond to the information.

(be) After the appeals conference, the Appeals Attorney or Appeals Auditor conference holder shall issue a written report of his or her findings, called a Decision and Recommendation ~~shall issue a written decision and recommendation~~, copies of which shall be sent to all parties. If a party did not appear at the appeals conference, the Decision and Recommendation will be based on the information in the file and the information obtained from the other party.

(ef) If the taxpayer or the Department has requested a hearing prior to, or within 30 days of, the date that the ~~decision and recommendation~~ Decision and Recommendation was mailed to the taxpayer, an oral hearing before the Board will be scheduled. If a hearing before the Board is not requested, official notice of the Board's action on the ~~decision and recommendation~~ Decision and Recommendation will be mailed to the taxpayer.

*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, [44003, 43807](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350, and 60522.

## **ARTICLE 3. HEARINGS ON JEOPARDY DETERMINATIONS**

### **5030. DEFINITIONS; BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS ARTICLE.**

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and applications filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to jeopardy determinations, and jeopardy assessments of private railroad cars, issued under the following programs, and provides two alternative means to challenge a jeopardy determination or jeopardy assessment: filing a petition for redetermination or reassessment and stay of collection pursuant to Regulation 5031; and filing an application for an administrative hearing pursuant to Regulation 5032:

#### **Alcoholic Beverage Tax**

California Constitution Article XX, Section 22;  
Revenue and Taxation Code Sections 32001-32556

#### **Ballast Water Management Fee**

Public Resources Code Sections 71200-71271;  
Revenue and Taxation Code Sections 44000-44008, 55001-55381

#### **Childhood Lead Poisoning Prevention Fee**

Health and Safety Code Section 105310;  
Revenue and Taxation Code Sections 43001-43651

#### **Cigarette and Tobacco Products Tax**

California Constitution Article XIII B;  
Revenue and Taxation Code Sections 30001-30481

#### **Diesel Fuel Tax**

Revenue and Taxation Code Sections 60001-60709

#### **Hazardous Spill Prevention Fee**

Revenue and Taxation Code Sections 43800-43810, 55001-55381

#### **Hazardous Substances Tax**

Revenue and Taxation Code Sections 43001-43651

#### **Integrated Waste Management Fee**

Revenue and Taxation Code Sections 45001-45984

#### **Motor Vehicle Fuel License Tax**

California Constitution Article XIX;  
Revenue and Taxation Code Sections 7301-8404

#### **Occupational Lead Poisoning Prevention Fee**

Health and Safety Code Section 105190;  
Revenue and Taxation Code Sections 43001-43651

#### **Oil Spill Response, Prevention, and Administration Fees**

Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax

Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax

(including State-administered local sales, transactions, and use taxes)

Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax

Revenue and Taxation Code Sections ~~38431-38435~~38101-38908

Tire Recycling Fee

Public Resources Code Sections 42860-42895;

Revenue and Taxation Code Sections 55001-55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-50161

Use Fuel Tax

Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, ~~43807~~, 44003, 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332, and 60333.

## **ARTICLE 4. STATE ASSESSEES AND PRIVATE RAILROAD CAR COMPANIES**

### **5043. ASSESSMENT FACTOR HEARINGS.**

The Board may annually conduct hearings to be called "Assessment Factor Hearings" to receive public testimony on issues relating to capitalization rates and other factors affecting values of California state-assessed property and private railroad cars. No later than 30 days prior to the hearing, ~~state-assessee~~state assessee and private railroad car taxpayers, or other persons wishing to be listed on the agenda, shall notify the Chief, Board Proceedings Division if they intend to make oral presentations at the hearing. Testimony of persons who do not notify the Chief, Board Proceedings Division as set forth above will be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessees or private railroad car taxpayers may submit written presentations to the Chief, Board Proceedings Division no later than the date of the hearing.

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Section 11651.

*References:* Revenue and Taxation Code Sections 110, 721, 11251, 11291, 11292, 11293, and 11294.

## **ARTICLE 5. TAXABLE PROPERTY OF A COUNTY, CITY, OR MUNICIPAL CORPORATION**

### **5051. FORM OF APPLICATION.**

The application shall be made in writing to the Board and shall be authorized by the governing body of the county, city, city and county or municipal corporation seeking relief. The official document authorizing the application shall be included. The application need not be under oath. The application shall show the facts claimed to require action by the Board, and may shall include or be accompanied by a ~~separate~~ statement of legal authorities, including relevant statutes and regulations. ~~If requested in the application, the Board shall issue written findings and decision.~~

*Note:* Authority: Government Code Section 15606(a).

*Reference:* Revenue and Taxation Code Section 1840.

### **5053. ANSWER TO APPLICATION.**

Prior to the hearing by the Board, the assessor whose assessment is questioned and the taxing agency ~~may, or, if the Chief, Board Proceedings Division requests,~~ shall, file a written answer to the application and a statement of legal authorities, including relevant statutes and regulations. The failure to file an answer shall not constitute a default or an admission of any matters set forth in the application. Copies of the answer and of the legal authorities shall be mailed to the applicant. A statement that mailing was made shall be endorsed upon the answer.

*Note:* Authority: Government Code Section 15606(a).

*Reference:* Revenue and Taxation Code Section 1840.

## **ARTICLE 6. PROPERTY TAX WELFARE EXEMPTION CLAIM REVIEW PROCEDURE.**

### **5063. HEARING PETITION: CONTENTS.**

(a) The petition for hearing shall be in writing and addressed to the Chief, Board Proceedings Division. It shall state all of the grounds upon which qualification is claimed, and shall include all documents the petitioner wishes the Board to consider in deciding the petition. The petition shall indicate whether an oral hearing is desired, and if so, claimant's estimate of the time necessary therefor. If requested in the petition, and in the event that the Board grants a hearing and hears the matter, the Board shall issue written findings and decision. The petition shall be signed by an authorized representative of the claimant and shall be mailed to the Chief, Board Proceedings Division of the State Board of Equalization at Sacramento, California, or shall be deposited personally at the headquarters office of the Board's office at Sacramento. The Chief, Board Proceedings Division may require the representative to demonstrate the representative's authority to represent the claimant.

(b) No later than 30 days after the date that the petition for hearing is received pursuant to subdivision (a), the Board Attorney assigned to the case shall schedule a meeting or telephone conference, at a time suitable for the petitioner and the assessor, for the purpose of establishing the agreed upon and contested facts and the legal issues under consideration.

(~~bc~~) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief, Board Proceedings Division and a copy shall be sent to the petitioner.

(~~ed~~) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief, Board Proceedings Division.

(~~de~~) The provisions of subdivisions (b) of Regulation 5075 shall apply to materials submitted pursuant to (a), (~~bc~~) or (~~ed~~) of this regulation.

(~~ef~~) The Board Staff shall also prepare a summary for Board hearing, which shall be a neutral statement of the relevant facts, the issues, and the positions of the department and the claimant. The summary for Board hearing shall not be written by any staff person or persons who reviewed the claim and determined it should be denied, or who participated in the preparation of the staff analysis and recommendation.

(~~fg~~) The Chief, Board Proceedings Division shall distribute the petition and related documents, the staff analysis and recommendation, the petitioner's response, if any, and the summary for Board hearing to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(gh) A reasonable extension of time for filing materials under (bc) or (ed) above may be granted by the Chief, Board Proceedings Division, upon a showing of reasonable cause. The request for an extension of time shall be submitted in writing before the scheduled due date of any materials.

(hi) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. Any other documents received shall be returned by the Chief, Board Proceedings Division to the person submitting the documents.

*Note:* Authority: Government Code Section 15606(a).

*References:* Revenue and Taxation Code Sections 254.5 and 270.

## **ARTICLE 7. GENERAL BOARD HEARING PROCEDURES**

### **5071. GENERAL.**

(a) This article applies to Board hearings under any of the following programs:

Administration of Franchise and Income Tax Laws  
Revenue and Taxation Code Sections 18401-19802

Alcoholic Beverage Tax  
California Constitution Article XX, Section 22;  
Revenue and Taxation Code Sections 32001-~~32556~~[34557](#)

[Ballast Water Management Fee](#)  
[Public Resources Code Sections 71200-71271;](#)  
[Revenue and Taxation Code Sections 44000-44008, 55001-55381](#)

Childhood Lead Poisoning Prevention Fee  
Health and Safety Code Section 105310;  
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax  
California Constitution Article XIII B, Section 12;  
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax  
Revenue and Taxation Codes Sections 60001-60709

Emergency Telephone Users Surcharge  
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge  
Revenue and Taxation Code Sections 40001-40216

~~Hazardous Spill Prevention Fee~~  
~~Revenue and Taxation Code Sections 43800-43810, 55001-55381~~

Hazardous Substances Tax  
Revenue and Taxation Code Sections 43001-43651

Insurance Tax  
California Constitution Article XIII, Section 28;  
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee  
Revenue and Taxation Code Sections 45001-45984



Motor Vehicle Fuel License Tax

California Constitution Article XIX, Sections 1-9;  
Revenue and Taxation Code Sections 7301-~~8404~~[8405](#)

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;  
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax

California Constitution Article XIII, Section 19;  
Revenue and Taxation Code Sections 11201-11702

Publicly Owned Property

California Constitution Article XIII, Section 11(g);  
Revenue and Taxation Code Sections 1840 and 1841

Sales and Use Tax

(including State-administered local sales, transactions, and use taxes)  
Revenue and Taxation Code Sections 6001-7279.6

Senior Citizens Homeowners and Renters Property Tax Assistance

Revenue and Taxation Code Sections 20501-20646

~~State~~ ~~State~~-Assessed Property

California Constitution Article XIII, Section 19;  
Revenue and Taxation Code Sections 721-868, 4876-4880, 5011-5014

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Tire Recycling Fee

Public Resources Code Sections 42860-42895;  
Revenue and Taxation Code Sections 55001-55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-~~50161~~[50162](#)

Use Fuel Tax

Revenue and Taxation Code Sections 8601-9355

Welfare Exemption

California Constitution Article XIII, Section 4(b);  
Revenue and Taxation Code Sections 214-214.14, 254.5, 270-272

(b) This article sets forth rules of general application which apply to hearings before the Board in all of the programs listed above. Where the procedure for a specific program differs from the general rule, the specific program and procedure are described in a subsection of the general rule. In addition, prior articles include regulations which address specific procedures for appeals from the Franchise Tax Board (Article 1), Business Taxes and Timber Yield Tax (Article 2), Hearings on Jeopardy Determinations (Article 3), State Assesseees and Private Railroad Car Companies (Article 4), Taxable Property of a County, City, or Municipal Corporation (Article 5), and Property Tax Welfare Exemptions (Article 6).

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.



*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 41071, 41128, 43501, [43807](#), [44003](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

#### **5075.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: BRIEFING SCHEDULE.**

(a) Appeals From Actions Of The Franchise Tax Board: General; Non-party (Amicus) Briefs. In all appeals from actions of the Franchise Tax Board, other than appeals contesting a finding of jeopardy status, the parties shall adhere to the following schedules and procedures for filing briefs. In jeopardy status appeals, Board Staff shall notify the parties of the schedule and procedure for filing briefs. Non-party (Amicus) briefs or letters may be filed up to and until the time that the briefing period, established pursuant to this Rule, for both the taxpayer and the Franchise Tax Board has ended. Either party may file a response to the non-party brief or letter no later than 30 days prior to the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. The response shall not extend the briefing period.

##### **(b) Appeals From Actions Of The Franchise Tax Board: Opening And Reply Briefs.**

(1) If the appeal is filed within the statutory period but is incomplete, the taxpayer shall be granted 90 days from the date of the acknowledgment letter from the Board within which to perfect the appeal by filing a complete opening brief as required by these regulations. A copy of all such materials shall also be mailed by the taxpayer to the Franchise Tax Board. The appeal is subject to dismissal if it is not perfected within the 90-day period.

(2) After filing of an appeal is perfected, the Franchise Tax Board shall be allowed 90 days from the date of the Chief, Board Proceeding Division's letter acknowledging receipt of the taxpayer's complete appeal in which to file a reply brief in support of its position. The Franchise Tax Board shall mail a copy of the reply to the taxpayer.

##### **(c) Appeals From Actions Of The Franchise Tax Board: Supplemental Briefs.**

(1) The taxpayer may file a supplemental brief, addressing only the points of disagreement the taxpayer has with the Franchise Tax Board's reply brief, within 30 days from the date of the Board's letter acknowledging receipt of the Franchise Tax Board's reply brief. The taxpayer shall mail a copy of the supplemental brief to the Franchise Tax Board. This brief shall ordinarily complete the briefing.

(2) In extraordinary circumstances, the Franchise Tax Board may be permitted to file a supplemental brief, addressing only the points of disagreement the Franchise Tax Board has with the taxpayer's supplemental brief, but only pursuant to previous written permission from Board Staff. Any such permissive supplemental briefs shall be filed within 30 days after receipt of permission to file. If the Franchise Tax Board is allowed to file a supplemental brief, the taxpayer shall have 30 days after receipt of the brief is acknowledged by the Board to file a response. This response shall then complete the briefing.

##### **(d) Appeals From Actions Of The Franchise Tax Board: Extensions Of Time.**

(1) At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of briefs may be granted upon a showing of extreme hardship or when the parties agree in writing to an extension of time and the request or agreement is filed with the Board Proceedings Division before the scheduled due date of any brief.

(2) Where either party fails to meet due dates, with the exception of failure to perfect as described above in Subsection (b)(1), the briefing of the appeal shall end and the Board shall take the matter under submission for decision on the existing written record.

(e) Additional Briefing or Evidence. ~~In extraordinary situations~~ If the Board or Board Staff, in either's discretion, determines that insufficient briefing or evidence has been provided, the Board or Board Staff may request additional briefing or evidence from either party. A request for additional briefing or evidence may be made during the briefing period or after the briefing period is ordinarily complete. Any such requested briefs or

evidence shall be ~~filed-submitted~~ within the time specified by the Board or Board Staff. ~~If additional briefing from the Franchise Tax Board is requested by Board staff, the taxpayer shall have 30 days after receipt of the brief is acknowledged by Board staff to file a final response.~~

*Note:* Authority: Government Code Section 15606(a).

*References:* Revenue and Taxation Code Sections 19405, 19406, 19047, 19048, 19072, 19084, 19085, 19087, 19331, 19332, 19333, 19334, 19345, 19346, and 20645.

#### **5076.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: VOLUNTARY DISMISSAL; NEGOTIATIONS; DEFERRALS; SUBMISSION FOR DECISION; ORAL HEARINGS.**

(a) Appeals From Actions Of The Franchise Tax Board: Voluntary Dismissal; Negotiations. An appeal from an action by the Franchise Tax Board may be dismissed at any time at the written request of the taxpayer, upon the request of the Franchise Tax Board when it concedes the deficiency or the refund, or on the basis of a written stipulation between the taxpayer and the Franchise Tax Board. Prior to ~~the issuance of a final~~ decision, the taxpayer and the Franchise Tax Board may enter into negotiations at any time for settlement of an appeal.

(b) Appeals From Actions Of The Franchise Tax Board: Deferrals. The Board or Board Staff may defer hearings or related proceedings, including briefing, for an indefinite period upon the filing of a written stipulation between the taxpayer and the Franchise Tax Board, or, for reasonable cause, for a specified period. The Board Proceedings Division shall notify the parties whether a deferral has been granted.

(c) Appeals From Actions Of The Franchise Tax Board: Submission For Decision; Oral Hearings. After all briefs have been filed in a Franchise Tax Board matter, the appeal shall be submitted for decision on the basis of the written record unless the taxpayer requests an oral hearing.

*Note:* Authority: Government Code Section 15606(a).

*References:* Revenue and Taxation Code Sections 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, and 20645.

#### **5079. HEARING PROCEDURE: ORDER OF PRESENTATION; WITNESSES; PRESENTATION OF EVIDENCE; STIPULATION OF FACTS; OFFICIAL NOTICE; CONCLUSION OF HEARING.**

(a) This regulation applies to all Board hearings.

(b) Order of Presentation. The hearing shall ordinarily proceed in the following manner. A member of the Board Staff shall report on the record whether campaign contribution disclosure statements have been filed in accordance with the requirements of Title 18, Division 2.2, Regulation 7011, and whether any disqualifying contributions have been reported. A Board Attorney shall summarize by oral statement the issues of each case. Taxpayers shall then state their position, and present evidence as they see fit, including by means of visual aids, subject to rulings by the Board Chair. The Department shall thereafter state its position and present its evidence. Taxpayers shall then be given an opportunity to reply.

(c) Witnesses. The taxpayer and the Department may offer witnesses to testify. The Board encourages the parties to provide the Chief, Board Proceedings Division, with the name and address of any witness who is going to testify and a brief description of the purpose of their testimony, in advance of the hearing. In addition, the Board Chair may, at the Board Chair's discretion or upon the request of a party, direct witnesses to testify under oath or affirmation. Each party may cross-examine opposing witnesses.

Board Staff may, upon recognition by the Board Chair, question the parties, cross-examine persons called as witnesses, and explain Board Staff's view as to the validity of any argument made, the value of evidence submitted, and any other relevant matter.

(d) Presentation of Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented if it is the sort of evidence on which responsible persons

are accustomed to rely in the conduct of serious affairs. Each party shall be permitted to comment on or respond to any affidavits or declarations submitted.

Items of documentary evidence and citations to judicial decisions issued after the briefing period has ended, and an analysis, discussion or arguments concerning the relevance of the evidence or decision, may be submitted to the Chief, Board Proceedings Division, at any time prior to or at the hearing on the matter, or at any time prior to the matter being submitted for decision if no hearing is held on the matter. The Chief, Board Proceedings Division, will send a copy of the evidence or citations and any analysis, discussion or arguments concerning the relevance of the evidence or decision to the members of the Board and to the other party. The Board or Board Staff will permit the other party an opportunity to submit a response which-that shall be limited to points of disagreement with the analysis, discussion or arguments.

The Board shall be liberal in allowing the presentation of evidence, but objections to the presentation of and comments on the weaknesses of evidence shall be considered in assigning weight to the evidence. The Board may refuse to allow the presentation of evidence which-that it considers irrelevant, untrustworthy or unduly repetitious.

(e) Submission of Exhibits into Evidence. Any materials presented by any party which have been marked as exhibits during the matter and which the party elects to be entered into the record must be moved into evidence. The Chair will ask the parties if the exhibits are to be submitted. A party must make a motion to move the exhibits into evidence. If there are no objections, the exhibit will be entered into evidence and made a part of the record of the pending matter. If any member or party objects to the admission of evidence, the question shall be discussed and voted upon by the Board.

(f) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the case for decision, a stipulation of the facts upon which they agree, the facts which-that are in dispute, and the reasons for the dispute. The Board or Board Staff may require the parties to file such a stipulation.

(g) Official Notice. The Board may take official notice of:

(1) the records maintained by the Board;

(2) tax returns filed with the Franchise Tax Board for or on behalf of the taxpayer or an affiliated company, together with related records on file with the Franchise Tax Board;

(3) any fact which may be judicially noticed by the courts of this State.

The parties may, at the hearing or through a petition for rehearing, request permission to refute any matter thus noticed.

(h) Conclusion of Hearing. That portion of the hearing in which evidence and argument are presented to the Board shall be concluded: upon a vote of the Board Members to conclude that portion of the hearing; by a declaration of the Board Chair that such portion of the hearing is concluded if there is no challenge to the Chair; or upon the making of a motion and a second that any action be taken on the matter.

*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 43807, 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

#### **5081. DECISION AND VOTING PROCEDURE: MAJORITY VOTE REQUIREMENT; VOTING.**

(a) General. After the hearing, the Board may decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.

(b) Majority Vote Requirements. A majority vote of the quorum is required for all decisions or actions of the Board. If there is no objection by a Board Member, a matter may be decided by unanimous consent.

(c) Voting.

(1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.

(2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Chairman may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

(3) Except as provided in subdivision (c) (2), in ~~in~~ order to cast a vote, a Board Member, or, when authorized by statute, the deputy of the State Controller, shall be personally present at the time the roll for the vote is called.

*Note:* Authorities: Government Code Section 15606(a); Health and Safety Code Sections 105310 and 105190; Public Resources Code Section 42882; Revenue and Taxation Code Sections 7051, 7202(d), 7202(h)(4), 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 43807, 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

## **5081.2. NOTICE OF BOARD DECISION; FINDINGS.**

(a) Notification of Decision. All parties to a proceeding shall be notified in writing of the Board's decision.

(b) Except as provided in subdivision (c), if ~~if~~ requested in a Property Tax petition, written findings and decision shall be rendered and sent to the petitioner.

(c) When the review, equalization and adjustment of the taxable property of a County, City, or Municipal corporation are completed, Board Staff shall mail to the assessor, the governing body and the auditor of the taxing agency, and ~~to the taxpayer a notice of the action of~~ copy of the Board's findings and decision with respect to the assessment.

(d) Whether or not a Welfare Exemption hearing has been granted, a written notice of the decision shall be sent to the taxpayer and to the assessor concerned.

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Section 11651.

*References:* Revenue and Taxation Code Sections 254.5, 270, 744, 1841, 11341, and 38445.

## **ARTICLE 9. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS**

### **5090. DEFINITIONS. BOARD HEARING PROCEDURES: TAXES AFFECTED BY THIS ARTICLE.**

a) The definitions of Article 7, Regulation 5070 shall apply to this Article, and Board hearings on claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7 commencing with Regulation 5070, except as otherwise noted.

b) This Article applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax --

Personal Income and Bank and Corporation Income Tax  
Revenue and Taxation Code Sections 18401-19802

Business [and Property](#) Taxes --

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;

Revenue and Taxation Code Sections 32001-~~32556~~[32557](#)

[Ballast Water Management Fee](#)

[Public Resources Code Sections 71200-71271;](#)

[Revenue and Taxation Code Sections 44000-44008, 55001-55381](#)

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;

Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIII B, Section 12;

Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge

Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge

Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Motor Vehicle Fuel Taxes

California Constitution Article XIX, Sections 1-9;

Revenue and Taxation Code Sections 7301-~~8404~~[8405](#)

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;

Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees

Revenue and Taxation Code Sections 46001-46751

[Private Railroad Car Tax](#)

[California Constitution Article XIII, Section 19;](#)

[Revenue and Taxation Code Sections 11201-11702](#)

Sales and Use Tax

(including State-administered local sales, transactions and use taxes)

Revenue and Taxation Code Sections 6001-~~7176, 7200-7212, 7251-7279~~[7279.6](#)

[Timber Yield Tax](#)

[Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908](#)

Tire Recycling Fee

Public Resources Code Sections 42860-42895;

Revenue and Taxation Code Sections 55001-55381

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-~~50164~~[50162](#)

Use Fuel Tax Law  
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Sections 7051, 8251, 9251, [11657](#), 30451, 32451, [38708](#), 40171, 41128, 43501, [44003](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 7091, 8269, 9269, 21013, 30458.9, 32469, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

#### 5091. ELIGIBLE CLAIMS.

Only those expenses which were incurred after the date of ~~filing the petition for redetermination notice of determination, jeopardy determination~~ or claim for refund in business ~~or property~~ tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax ~~or Timber Yield Tax~~ case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Section. With the exception of expenses incurred in cases resolved through the Franchise Tax Board's Review and Write (RW) procedure, all expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board".

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Sections 7051, 8251, 9251, [11657](#), 30451, 32451, [38708](#), 40171, 41128, 43501, [44003](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 7091, 8269, 9269, 21013, 30458.9, 32469, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

#### 5093. CLAIM PROCEDURE.

(a) Claim Form. The claim shall be filed with the Chief, Board Proceedings Division, on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98) which is hereby incorporated by reference.

(b) One Year Filing Deadline. The completed claim form shall be filed within one year of the date the decision of the Board becomes final. At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of a completed claim form may be granted upon a showing of good cause if the written request is filed with the Chief, Board Proceedings Division, prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant shall be granted 30 days additional time to complete the claim form.

(c) Staff Statement. Within 60 days of filing of the claim, Board ~~staff~~ [Staff](#) and, when applicable, Franchise Tax Board ~~staff~~ [Staff](#), shall submit a statement in response to the claim. At the discretion of the Chief, Board Proceedings Division, extensions of time for the filing of a staff statement may be granted upon a showing of good cause if a written request is filed with the Chief, Board Proceedings Division, before the scheduled due date of the staff statement.

(d) Claimant Response. The staff statement(s) shall be mailed to the claimant, who shall be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. At the discretion of the Chief, Board Proceedings Division, extension of time for the filing of a response may be granted upon a showing of good cause if the written request for extension is filed with the Chief, Board Proceedings Division, before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board ~~staff~~ [Staff](#) or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.

~~(e) Submission to the Board. The written submissions of the claimant, Board staff or Franchise Tax Board staff, and a summary prepared by the Legal Division shall be scheduled for consideration by the Board.~~

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Sections 7051, 8251, 9251, [11657](#), 30451, 32451, [38708](#), 40171, 41128, 43501, [44003](#), 45851, 46601, 50152, 55301, and 60601.



*References:* Revenue and Taxation Code Sections 7091, 8269, 9269, 21013, 30458.9, 32469, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

#### **5094. ORAL HEARING ON REIMBURSEMENT CLAIM.**

~~After presentation to the Board of the summary of the claim and the written submissions, the Board shall schedule an oral hearing. The claimant and, when applicable, the Franchise Tax Board shall receive 60 days notice of the hearing date and time, and the procedures shall be governed by Article 7. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.~~

After the submission of documents as set forth in Regulation 5093, the claim shall be submitted for decision on the basis of the written record unless the claimant requests an oral hearing before the Board. If the claimant requests an oral hearing before the Board, the claimant, and when applicable the Franchise Tax Board, shall receive 60 days' notice of the hearing date and time.

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Sections 7051, 8251, 9251, [11657](#), 30451, 32451, [38708](#), 40171, 41128, 43501, [44003](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 7091, 8269, 9269, 21013, 30458.9, 32469, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

#### **5095. NOTICE OF DECISION.**

Whether or not an oral hearing is held on the claim, the Board shall send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding the provisions of Article 7, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement shall be available as a public record for at least 10 days prior to the effective date of the award except appeals from actions of the Franchise Tax Board which shall be available as a public record for at least 10 days prior to the effective date of the determination.

*Note:* Authorities: Government Code Section 15606(a); Revenue and Taxation Code Sections 7051, 8251, 9251, [11657](#), 30451, 32451, [38708](#), 40171, 41128, 43501, [44003](#), 45851, 46601, 50152, 55301, and 60601.

*References:* Revenue and Taxation Code Sections 7091, 8269, 9269, 21013, 30458.9, 32469, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.